

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MICHAEL E. BURKE,

Plaintiff,

8:24CV382

vs.

VETERANS ADMINISTRATION,

Defendant.

ORDER

Plaintiff filed an application to proceed with this litigation without prepaying fees or costs. Filing No. 6. The information contained in Plaintiff's affidavit, as submitted, does not sufficiently demonstrate that Plaintiff is ineligible to proceed in forma pauperis and his motion will be denied without prejudice to reassertion. Specifically, Plaintiff indicates that he has received income in the past twelve months. However, he has failed to provide the Court with the amounts of that income. There are also other portions of the application which are blank and illegible.

If Plaintiff wishes to prosecute a civil action in this Court without prepayment of fees, he must demonstrate that he "is unable to pay such fees or give security therefor." 28 U.S.C. § 1915(a)(1). In forma pauperis status is a matter of privilege, not of right. *Williams v. McKenzie*, 834 F.2d 152, 154 (8th Cir. 1987). To enjoy the statute's benefits, a litigant need not show he is "absolutely destitute," but he must demonstrate that, because of his poverty, he cannot pay for the litigation costs and

still be able to provide for the necessities of life. *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948). See also *Lee v. McDonald's Corp.*, 231 F.3d 456, 459 (8th Cir. 2000). Determining whether to grant or deny in forma pauperis status under § 1915 is within the sound discretion of the trial court. *Lee*, 231 F.3d at 458.

The application, as submitted, has deficiencies. This includes, but is not limited to, Plaintiff's failure to list the income and amounts of such income he has received in the past twelve months. Because of these deficiencies, Plaintiff has not fulfilled his burden.

Accordingly,

IT IS ORDERED:

1. Plaintiff's application to proceeding without prepaying fees or costs, Filing No. 6, is denied without prejudice to reassertion.
2. Plaintiff shall either pay the \$405.00 filing fee within 30 days of the date of this order or file an Amended Application to Proceed in the District Court without Prepaying Fees or Costs that cures the deficiencies addressed herein.
3. Failure to comply with this order may result in the undersigned recommending this matter be dismissed.
4. The Clerk of the Court is directed to set a pro se case management deadline in this matter for November 11, 2024.

Dated this 2nd day of October, 2024.

BY THE COURT:

s/ Jacqueline M. DeLuca

United States Magistrate Judge